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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Sierra Club Legal Defense Fund a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV) .

[2 August 1991]

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1990/7, entrusted Mrs. Fatma Zohra Ksentini with the task of preparing a study on human rights and the environment. The Commission on Human Rights, in its resolution 1991/44, endorsed the decision of the Sub-Commission and requested the Secretary-General to invite non-governmental organizations to provide the Special Rapporteur with information useful to her work on the study.

2. The Sierra Club Legal Defense Fund presented an issue paper to the Special Rapporteur and to the Commission in Feburary 1991. In addition, it hosted a series of meetings with the Special Rapporteur and the Secretariat at

our headquarters in San Francisco from 28 April to 4 May 1991. During that period, we arranged for the Special Rapporteur to meet with a number of non-governmental organizations in consultative status with the Economic and Social Council, organizations of indigenous peoples in North, Central and South America, as well as organizations involved with worldwide environmental concerns. The Legal Defense Fund and many of the other participating organizations presented the Special Rapporteur with written materials and oral testimony on issues of concern.

3. The Sierra Club Legal Defense Fund has also prepared an issue paper for the forty-third session of the Sub-Commission. The paper sets out the development of this issue at the Sub-Commission and Commission, the supportive work of the Sierra Club Legal Defense Fund, and a number of issues we think essential to develop in the course of work on the study. This statement discusses one of those issues: the right to information.

The right to information

4. The right to information, set out in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, 1/ is essential to protect human rights relating to environmental concerns. In truth, it will not be possible to address environmental problems at all without this freedom.

5. The right to information is essential for any number of environmental purposes. Some of the most important are:

(a) Individuals, communities and neighbouring countries must have information regarding specific hazardous materials and conditions at industrial facilities located in their vicinity for disaster planning and response wherever there is a danger of large-scale industrial accidents like those at Chernobyl and Bhopal; 2/

(b) Individuals, communities and neighbouring countries must have information regarding the full range of environmental consequences of proposed development projects in their regions in order to participate meaningfully in decisions that could adversely affect them due to increased pollution, loss of land base, dislocation, and other impacts;

(c) Individuals, communities and neighbouring countries must have information regarding pollutants and wastes associated with industrial and agricultural processes so that they can make informed choices among alternative paths for growth, development, and waste disposal so as to protect basic human rights to health and quality of life.

6. The Secretary-General, in his progress report to the Preparatory Committee for the United Nations Conference on Environment and Development entitled "Environment and development education and public awareness", 3/ commented specifically on the need for environmental education and information: "While the needs are high so are the benefits of actions and the costs of inaction." 4/

7. In the view of the Sierra Club Legal Defense Fund the right to information has two important aspects: (1) the right to the free flow of information and (2) the right of access to accurate, relevant information. International action in this area reflects these two aspects. For example article 1 of the draft Declaration on Freedom of Information provides, in pertinent part: "[t]he right to know and the right freely to seek the truth are inalienable and fundamental rights of man." 5/ Article 4 provides that those who disseminate information have a duty of good faith to report accurately on the facts. These provisions clearly reinforce the right of access to accurate, relevant information.

8. It is clear that both the "free flow" and "accurate and relevant" aspects of the right to information impose a duty on Governments. Article 2 of the Declaration sets out governmental duties relating to "free flow". Other provisions of international instruments stress the "accurate and relevant" aspect. For example, in the Convention on the International Right of Correction, Governments in countries where incorrect, distorted or damaging information about other Governments has been disseminated are required to release a correcting statement (called a "communiqué") provided by the injured Government. 6/ The "accurate and relevant" aspect is also strongly present in the set of principles adopted by UNESCO on which a new world information and communication order could be based. 7/ The good-faith duty imposed by article 4 of the Declaration applies to any disseminator, including Governments. 8/

9. Applying these rights and duties to the field of the environment requires the recognition of a right to reliable ecological information and the right to ensure its free flow both within countries and across international borders. This right not only protects individuals and groups, but also Governments themselves. One of the areas of great conflict in the issue of human rights and the environment has been that certain Governments of developed countries or multinational enterprises do not want to be obliged to provide full disclosure on potential environmental/human rights dangers. Rather, they seek a situation of maximum ignorance on the part of the Governments from whom they wish to extract highly lucrative development contracts. Many Governments have been persuaded by promises of great national benefit, which all too frequently turn into benefit for the exploiting country and a severe detriment to the developing country in terms of the environment and the whole range of human rights. 9/

10. The United Nations itself has recognized the importance of information in the area of environment. For example, the Department of Public Information has now released Status of World Environment in Mexico, Italy and Japan in the local languages, thereby greatly enhancing international dissemination of this important work. 10/ The General Assembly, in its resolution 45/76 entitled "Questions relating to information" of 4 December 1990 has also mandated that the Department pay particular attention to both human rights and the environment in its information activities.

11. The Sierra Club Legal Defense Fund hopes that the Special Rapporteur on human rights and the environment will devote attention to this topic as work proceeds on the study. As stated in Only One Earth, Governments must recognize:

> "the right of individuals to know and to have access to current information on the state of the environment and natural resources, the right to be consulted and to participate in decision-making on activities likely to have a significant effect upon the environment, and the right to legal remedies and redress for those whose health or environment has been or may be seriously affected." 11/

Notes

1/ Both of these article 19 texts protect the rights to freedom of opinion and expression, and to seek, receive and impart information through any media, regardless of national boundaries.

2/ Such catastrophes can also have long-range economic impacts both within and outside the affected country. These impacts have important human rights implications as well. For example, an ecological catastrophe can remove from use large areas of a country's agricultural or other land base or waters, result in a large number of injured and homeless persons, and create a whole population of environmental refugees.

3/ A/CONF.151/PC/21.

4/ Ibid., para. 11.

5/ Economic and Social Council resolution 756 (XXIX) (1960). Regrettably, this Declaration has been languishing in the General Assembly since 1980, when it last appeared on the Assembly's agenda.

6/ United Nations, Treaty Series, vol. 439, No. 191. Unfortunately, this important convention has been ratified by only 12 countries: Burkina Faso, Cuba, Cyprus, Egypt, El Salvador, Ethiopia, France, Guatemala, Jamaica, Sierra Leone, Uruguay and Yugoslavia.

7/ UNESCO General Conference, resolution 21 C/4.19 (Belgrade, 1980).

8/ Other important documents in this field have stemmed from UNESCO's regional intergovernmental conferences. Of particular interest are the Kuala Lumpur declaration (UNESCO Intergovernmental Conference on Communication Policies in Asia and Oceania (1979) and the Yaoundé Declaration (UNESCO Intergovernmental Conference on Communication Policies in Africa (1980) (which stress the rights freely to inform and be informed).

9/ The human rights affected frequently include the right to self-determination and to sovereignty over natural resources. Developing countries can be left with their natural resources decimated, environmental problems overtaking all aspects of life, and literally no independent ability to develop economies capable of providing even subsistence for the majority of their peoples. The case of Haiti illustrates this tragedy.

10/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 21 (A/45/21), p. 35.

11/ L. Timberlake, Only One Earth (the book of the BBC series of that name) (BBC 1987).

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Sub-Commission on Prevention of
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Forty-third session
Agenda item 17 (b)

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

PREVENTION OF DISCRIMINATION AND PROTECTION OF WOMEN

Written statement submitted by the International Council of Psychologists, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

GE.91-12720/6982a

Gender-related differences

1. Coronary artery disease (blockage or narrowing of the arteries of the heart) is the number one killer of men over 39. It is also a killer of women over 65, although women typically get coronary artery disease much later than men do. Doctors attribute this to women's hormonal cycles. The reason for automatically assuming this medically is that women's sex hormones protect them against heart disease, and that only after menopause does their risk begin to be equal to that of men's. A recent study suggests that postmenopausal women who take estrogen (but not in the form of oral contraceptives) may significantly reduce their mortality rate from heart attacks. However, other studies have shown that this is not true and have invariably failed to confirm this finding. Merely continuing ovulation does not mean that women acquire immunity from heart attacks.

Medical science and coronary artery disease

2. What does medical science know about coronary artery disease and where does this information and knowledge come from? Primarily, studies of coronary artery disease in men have supplied us with the scientific facts. For example, the New England Journal of Medicine (January 1988) reported that an aspirin taken every other day can reduce the risk of heart attack by almost half, but not the mortality rate as subsequent investigation shows. The important point here is that the 22,000 participants in the study were all male physicians. This bias has been commented upon more recently. For instance, Dr. William Castelli, director of the ongoing Framingham heart study, which is one of the few large-scale studies to include both men and women, poited out the sex bias in medical research.

Women and triglycerides

3. Another gender-related difference which stands out is that blood triglycerides in women seem to be more directly connected to heart disease than the bio-chemical/physiological factors in men. Triglycerides are fats. They constitute part of the blood lipids but are different from cholesterol. Their levels fluctuate more than those of cholesterol and they depend more on the level of fat in the diet. If blood analysis is done after fasting, the triglycerides serum level will be different than when analysis is done after consumption of food. High triglyceride levels in men are indicative of trouble only if cholesterol levels are also correspondingly high. But in the case of women, high triglyceride levels are troublesome and can cause worry even if cholesterol levels are within the normal range. No clear explanation or medical understanding exists as to why this is so.

Myth: Women don't get heart attacks

4. "Because of the myth that women don't get heart attacks," Dr. Castelli contends "doctors may not take women's signs and symptoms seriously". It is true that more men die from heart attacks, but every year about 260,000 women die in the United States of America of coronary artery disease. Some things that are known about coronary artery disease are more directly applicable to men than to women, who apparently are subject to this type of disease - or avoid getting it - in their own way. This has implications for behavioural

science and behavioural medicine - from the male and female differences in CAD and the consequences thereof, for observations by the medical profession, and women and men themselves.

Smoking and women

5. For a very long time, the myth prevailed that smoking was not associated with heart disease in women. For younger women it is now known that the most significant risk factor is smoking. Among other studies, a Harvard study of 120,000 nurses aged between 30 and 55 indicated clearly that the number of cigarettes smoked directly correlated with the risk of fatal heart attack, and there were no levels whatsoever that appeared safe.

Smoking and other risk factors

6. Studies have pointed out that smoking also greatly increases the risk among women who have other risk factors as well, for example, older women who may be overweight, and women with a family history of heart disease. But the worst combination in women is that of smoking and oral contraceptives. Facts and statistics reveal that this combination has caused a number of heart attacks in younger women, including some teenagers. The tobacco advertisement "You've come a long way, baby" literally means "a long way" on the road to a heart attack and death. To which might be added: "you've got a long way to go baby", towards good health, and towards experiencing freedom from nicotine dependence, which can be both chemical and emotional and has psychological implications for habit patterns, behaviour and so on. One study showed that 55 per cent of heart attacks in women under 50 can be clearly attributed to smoking. Smoking by women during pregnancy can cause birth defects. In both women and men smoking can cause, in addition to heart attacks and cancer, lung and respiratory disease, for example emphysema and chronic cough (smoke related/smoke inhaled), can aggravate asthma and can contribute to congestive heart failure. The Surgeon-General of the United States has commented that one in every five persons will die due to smoking, that members of ethnic minorities (Blacks, Hispanics, Asians and others) and blue collar workers smoke more, and that non-smoking is related to educational level. Smoking also dulls the sense of smell and decreases sensitivity. All tobacco contains nicotine. Nicotine can cause high blood pressure, strokes and heart attacks. According to research studies young women are now smoking more than young men in the United States and more children are smoking; also, women are finding it harder to give up smoking than men. Smoking not only harms smokers but also non-smokers. In developing countries, smoking is on the rise, and trends indicate an upswing. Psychologically, smoking has been associated with pleasure, enjoyment and freedom. The vogue is therefore to be "fashionable and stylish" by smoking, and smoking is associated with "strength" and "success", and with being "sensually appealing". In the beginning, women start smoking out of curiosity. Then, as they pursued the "forbidden fruits", smoking became serious and addictive. Individual differences and bio-chemical individually and uniqueness should be taken into consideration in medical practice.

The female heart and two other facts

7. Two other facts deriving from the medical studies are important about the female heart. Women with heart disease may have chest pains off and on for quite a long time before they actually have a heart attack. By contrast, men typically tend to have an attack with relatively little or no warning. Once a woman has had an attack, her prognosis tends to be less favourable in general than a man's. Following a heart attack, more women than men die during the first month and they have a higher rate of recurrence.

8. When women complain of chest pains, the doctor's typical response is that it is all due to "nervousness", or "anxiety" on the part of women. If a man has chest pains, it is thought advisable for him to be checked immediately for a heart condition; for women it is "all in their head", or "psychosomatic". The problem on the part of some physicians is an attitudinal one towards women.

How can a woman avoid cardiac artery disease?

9. Perhaps the most important thing to realize is that one can develop cardiac artery disease. This can occur at any age. There is a clear necessity for following a prudent, nutritionally balanced diet, low in sodium, cholesterol, and fats of all kinds, to eat fresh vegetables and fruit, fibre and grains, to avoid too many sweets, to try to maintain an acceptable weight and to exercise appropriately. By all means, don't smoke, don't start if you don't already, and stop if you do. It is imperative to stay active and alert. A regular medical checkup, which includes measuring blood lipids, is a "must". If there are any signs of coronary artery disease or if there is a family history of it, they should be taken seriously, and a physician should be found who will also take them seriously. This calls for importance to be given to female factors in behavioural science and behavioural medicine by the medical community, and a better awareness on the part of women themselves.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
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Forty-third session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION ESTABLISHED UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8(XXIII)

Written statement submitted by Pax Christi-International Catholic Peace Movement, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 August 1991]

1. The right of peoples to self-determination, as enshrined in the Charter of the United Nations and numerous other international instruments, is both a fundamental human right, appertaining to all peoples and nations, and a prerequisite for the enjoyment of other human rights and freedoms of the individual. As such, the denial of the right to self-determination will inherently lead to gross violations of other fundamental rights and freedoms.

GE.91-12723/6995a

2. Pax Christi wishes to address in particular one type of human rights violation, namely the practice of population transfer, a practice which in itself and through its effects constitutes a violation of basic human rights and in particular of the right to self-determination. During its forty-second session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided, in resolution 1990/17, to consider the human rights dimensions of population transfer, including the policy and practice of the implantation of settlers and settlements.

3. The right to self-determination refers to groups described as "peoples". Peoples can be identified by a subjective perception of "peoplehood" as well as by shared, objective and identifiable common characteristics such as race or ethnicity, language, culture, tradition, customs, or a history which is distinguishable from that of other groups.

4. The practice of population transfer, defined as the movement of people either into or away from a certain territory, with active or passive participation by Government and without the free and informed consent of the people being moved or the people into whose territory they are being moved, can broadly be divided into two categories, namely the transfer of people and the implantation of settlers, including settlements in occupied territories and colonized lands, and the removal of people from their domicile. Population transfer affects the human rights of both the people who are being transferred and the original inhabitants of the territories into which others are being moved.

5. The practice of population transfer violates the right to self-determination, including its most fundamental aspect, the right to continue to exist as a people, when population transfer contributes to the destruction of the distinct identity of a people and removes their right or ability to determine their own destiny as a people. Unique characteristics, including race ethnicity, language, religion, culture, tradition and history, setting a people apart from geographic neighbours, are in danger of disappearance through population transfer. A distinct people whose land is subject to an occupying or otherwise alien Power's population transfer most often is stripped of the opportunity to determine its status and to pursue its economic, social and political development and, thus, denied its right to self-determination.

6. The denial is evident when administrators and settlers of the occupying or dominating Power flood into the land of a distinct people and appropriate for themselves dominant positions in political, economic, and cultural fields. Alien settlers who take positions of political, economic or cultural power, with or without the active encouragement or assistance of the Government, contribute to alien political domination and to cultural subjugation. The sheer scale of a population transfer will often cause a distinct people to become a minority in its own homeland, and therefore prevent the realization of any right to self-determination and ultimately, the disappearance of the subject people's national identity.

7. As much attention has been given over the past years by the Sub-Commission as well as by the Commission on Human Rights to the question of gross and systematic human rights violations in Tibet, and as massive Chinese population transfer threatens the enjoyment of all fundamental human rights in Tibet, including the right to self-determination, its seems appropriate to pay special attention at this time to the Tibetan situation.

8. The Tibetan people meet all the relevant criteria for "peoplehood" and, moreover, possessed an independent State prior to its occupation by China in 1949/1950. Consecutive Chinese Governments have themselves admitted that Tibetans are a distinct people if not a separate country, and at times have recognized the Tibetans' claim to self-determination. Even irrespective of Tibet's past legal status, today the Tibetan people is a people under colonial or alien domination, whose right to self-determination, as recognized by the United Nations General Assembly in resolution 1723 (XVI) and reaffirmed in resolution 2079 (XX), has been systematically violated. Typical of some of the worst forms of colonialism, a large number of Chinese have and are still being transferred into Tibet. It appears that China hopes to reduce the Tibetans to an insignificant minority in their own country through this policy. As Tibet's right to self-determination has been systematically violated, Tibetans have been subject to continuous and gross violations of individual human rights for the past 40 years.

9. Tibetans themselves consider demographic aggression the most serious threat to their survival as a people:

> "The massive influx of Chinese colonists has imposed a time limit. Our struggle for survival is now a race against time ... The long-standing policy and aim of Beijing remains the same: to eliminate Tibetan national identity, and thereby the Tibetan struggle, through assimilation and absorption hastened by systematic population control ... The present flow (of Chinese settlers) is serious enough to threaten the survival of the Tibetan people. 1/

10. Although different estimates exist regarding the numbers of Chinese settlers who have moved to Tibet since the country's occupation, no one denies the large-scale movement of Chinese to Tibet, especially to the urban centres and the eastern and north-eastern areas bordering China, referred to by the Chinese Government as "autonomous" districts and prefectures. Whereas there were no more than 300,000-400,000 Chinese in the whole of Tibet in 1949. Tibetan sources put the number of Chinese in Tibet at over 6 million today. Even official Chinese statistics put the number at 3.5 million at least, excluding the military and administrative personnel (several hundred thousand) and the large numbers of individuals who move to Tibet "illegally".

11. Chinese supreme leader Deng Xiaoping has confirmed the existence of a population transfer policy but argued that the TAR (Tibet Autonomous Region) and other parts of Tibet need Chinese immigration as Tibet's own population is "inadequate to develop the region's resources". Significantly, Chinese

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1/ Lhasang Tsering, "The Decisive Decade?" in Lungta, July 1991, p.5.

authorities impose population control measures on Tibetans thus preventing them from achieving the higher population claimed to be necessary for this development. The need to develop and "civilize" the "backward" Tibetans has been used as justification for actively encouraging Chinese settlers to move to Tibet through government incentives. Higher wages, increased pensions, guaranteed education, good housing are only a few of the incentives offered to attract both skilled and unskilled labour in Tibet. China's population transfer policy has in the past already reduced the Mongols, Manchus and Uyghurs to minorities in their own countries.

12. More important than the numbers of Chinese in Tibet is the impact this transfer into Tibet is having on the exercise of basic human rights of the Tibetans and on the survival of the distinct Tibetan national, cultural, religious and political identity. Especially worrying is the emergence of strong patterns of discrimination against Tibetans. Thus, society in Tibet is today divided along racial lines. In contradiction with the right of peoples to self-determination, Tibetans live in largely segregated areas, are excluded from positions of real political or economic power and are subjected to discrimination in employment, education and health care. They are restricted in their ability to travel within and outside the country, and to express and organize themselves. The native Tibetan population and the Chinese immigrants are thus developing as two distinct - separate but unequal - communities in Tibet, with Tibetans increasingly pushed to the periphery of political, social, economic and even cultural life. This evidently is the result of a deliberate policy of the Chinese Central Government in Beijing.

13. As the application of population transfer policies are mostly directed at specific racial, religious or ethnic groups, it not only results in violations of fundamental individual human rights but also to violations of the rights laid down in the International Convention on the Elimination of All Forms of Racial Discrimination. In the case of people being moved into an occupied or alien-dominated territory, as is the case of Tibet, the practice of population transfer is rooted in racism and results in widespread and systematic discrimination.

14. Pax Christi urges the Sub-Commission to consider seriously the human rights dimensions of population transfer during its forty-third session. Pax Christi also specifically urges the Sub-Commission to take appropriate action without delay with respect to the serious situation in Tibet.

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Sub-Commission on Prevention
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Forty-third session
Agenda item 19

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

REPATRIATION OF VIETNAMESE ASYLUM SEEKERS FROM HONG KONG

1. Human Rights Advocates is concerned with the September 1990 agreement among the UNHCR, the United Kingdom, Hong Kong, and the Socialist Republic of Viet Nam regarding the repatriation of Vietnamese asylum seekers "who, while not volunteering to return to Viet Nam, are nevertheless not opposed to repatriation". Under this new agreement Vietnamese asylum seekers in Hong Kong are to be returned to Viet Nam if they have been refused refugee status, even though they do not volunteer to return.

2. Human Rights Advocates also wishes to bring to the attention of the Sub-Commission on Prevention of Discrimination and Protection of Minorities the current negotiations among various States and intergovernmental organizations regarding the return of such non-volunteers to specialized holding centres within the country of origin.

3. Of concern is the lack of protection accorded to returnees by the Socialist Republic of Viet Nam as long as clauses of the Vietnamese penal code that permit sanctions against clandestine departure remain in effect. We wish to note that Human Rights Committee General Comment No. 15 states that "... in certain circumstances an alien may enjoy the protection of the Covenant [on Civil and Political Rights] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise".

4. The new approach to repatriation calls into question the compliance of all who are party to the agreement, including UNHCR, with article 33 (regarding the refoulement clause) of the United Nations 1951 Convention relating to the Status of Refugees. Conclusion No. 40 of the Executive Committee of UNHCR states, in part, "The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected".

5. We wish to bring to the Sub-Commission's attention the right of asylum seekers to be free from coerced repatriation in situations threatening gross violations of human rights. In its comments regarding the draft declaration on the right of everyone to leave any country, including his own, and to return to his country, UNHCR notes that this right involves the responsibility of the country of origin to respect the rights of its citizens to return in safety and dignity (E/CN.4/Sub.2/1989/44/Add.6).

6. The right to return also involves the responsibility of countries of shelter or asylum to refrain from forcibly repatriating aliens within their borders who may be threatened with harm upon return to their country of origin. Treaty as well as customary international law gives rise to this responsibility. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment confirms that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he [or she] would be in danger of being subjected to torture" (article 3, para. 1).

7. Human Rights Advocates urges that the draft declaration on the right of everyone to leave any country, including his own, and to return to his country address the issue of forcible or involuntary repatriation of persons to places where they might be subjected to human rights violations.

8. We further urge that the draft declaration amplify the right to non-refoulement, and also the right to a fair determination of refugee status.

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Forty-third session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

DETENTION OF VIETNAMESE ASYLUM SEEKERS IN HONG KONG

1. Human Rights Advocates has been concerned over the continued administrative detention of asylum seekers, particularly Vietnamese "boat people" in Hong Kong. Such arbitrary detention violates human rights articulated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other pertinent instruments.

2. Arbitrary detention of asylum seekers has been noted with concern by the Special Rapporteur, Mr. Louis Joinet, in the report on the practice of administrative detention (E/CN.4/Sub.2/1990/29).

GE.91-12730/1168H

3. The use of detention in order to deter asylum seekers from seeking shelter in a potential country of asylum is unlawful and wholly inconsistent with international standards for the protection of refugees.

4. The policy of detaining asylum seekers has been in place in Hong Kong for over three years. Currently, approximately 60,000 Vietnamese asylum seekers are detained under harsh and degrading prison-style conditions, many for years, without justified cause.

5. Human Rights Advocates also notes with concern that the Hong Kong policy affects several thousand unaccompanied minors and other vulnerable individuals who must wait years prior to their status-determination procedures are begun. In his opening remarks to this session of the Sub-Commission, Mr. Jan Martenson, Under-Secretary-General for Human Rights, suggested that comments on agenda items be relevant to the rights of the child. We urge that this be done regarding detention of asylum-seeker children, those with family members or unaccompanied.

6. Human Rights Advocates commends the establishment of a working group on arbitrary detention (E/CN.4/1991/42), and requests that the group make specific reference to asylum seekers.

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Sub-Commission on Prevention of
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of Minorities
Forty-third session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[12 August 1991]

CONSOLIDATED LIST OF THE SECRETARY-GENERAL OF PROVISIONS IN THE VARIOUS UNITED NATIONS STANDARDS RELATING TO HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE (E/CN.4/Sub.2/1991/26)

1. The Statute of the United Nations International Court of Justice is described in the Charter of the United Nations as "an integral part of the present Charter" (Art. 92). Article 38 of that Statute concerns (a) treaties, (b) "international custom" and (c) "the general principles of law recognized by civilized nations".

GE.91-12733/1164H

2. Those general principles of law often have been a focus of International Court concerns and, with respect to human rights, have resulted in juridical recognition that the Universal Declaration of Human Rights has achieved the significant status of customary international law.

3. The two preceding paragraphs will remind readers first, that the Charter of the United Nations itself is the supreme United Nations human rights instrument (for instance, see Articles 55 and 76); and second, that the Universal Declaration is merely one of several United Nations instruments which contain provisions that indeed have become "general principles of law recognized by civilized nations".

4. Human Rights Advocates suggests that the administration of justice in the world will suffer if Governments are misled by unjustified assumptions that only United Nations "norms" create legal duties and that United Nations "standards" need not be observed. That idea seems to appear, inter alia, in the note by the Secretary-General (E/CN.4/Sub.2/1991/25) regarding the creation of a working group whose task is therein described as that of "investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned". (Emphasis added).

5. Those words imply that United Nations norms (contrasted with United Nations standards) come into effect only when "accepted by the States concerned". That would be an erroneous conclusion because States also, of course, are bound by customary international law, which embodies rules of the Universal Declaration. Analogously, that law also embodies many clauses of the two United Nations Covenants that, like clauses of the Universal Declaration, have become norms even for Governments that have not yet "accepted" those two instruments.

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

THE RIGHT TO A FAIR TRIAL

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1991]

FAIR TRIAL, DUE PROCESS AND "NON-JUDICIAL PROCEEDINGS"

WHEN ARE MOST PEOPLE HURT BY UNFAIRNESS?

1. Governments, whether they be powerful or weak, rich or poor, huge or tiny, everywhere and often penalize and deprive individuals of human rights by resorting to a process called administrative adjudication. Too many jurists, unfortunately, ignore the gross violations that thus are perpetrated.

2. One explanation of the phenomenon is that throughout the world most lawyers, whether they serve Governments or private clients, traditionally have been taught by professors to focus on advocacy before courts, and relatively little attention has been given to "administrative judging".

3. That fact is noted briefly in the admirable report by Mr. Chernichenko and Mr. Treat. Not only do they identify distinctions between criminal and civil trials; they also refer to non-judicial trials. (See, for example, paras. 70, 79-80, 85, 89, 94, and 100-101 of E/CN.4/Sub.2/1991/29.)

4. In most nations, incalculably more people are harmed seriously by administrative decisions than by judicial decisions:

(a) Refugees. For every group of hopeful refugees and other displaced people whom courts are able to assist, hundreds of thousands of others have their rights (and even their fate) determined finally by non-judicial officials, and the injustices too often are notorious;

(b) Administrative detainees. This Sub-Commission has become expert regarding the mentally and physically disabled, the disappeared, the enslaved, the forced labourers, the "suspects", and the tragically innumerable others for whom habeas corpus, amparo, and other judicial relief is in fact a mere mirage;

(c) Men, women and children who are employees. For a century or more, difficulties concerning rights to decent working conditions, to organize, to picket and demonstrate, to strike, to insurance and pensions and much more have been adjudicated mostly by government officials who are not judges;

(d) Persecuted individuals. Paragraph 161 of the annotated agenda (E/CN.4/Sub.2/1991/Add.1) refers to men and women "prosecuted or persecuted merely because of ... connection ... with a suspect, an accused person or a person who has been convicted". Judges are the ones who handle prosecutions. Administrative officials, however, are the ones who effect innumerable persecutions.

(e) Other victims of unfair administrative trials. The list seems endless because the scope of non-judicial empowerment is indeed likely to observe boundaries that are limitless.

How might this Sub-Commission respond?

5. Scholars who study administrative law have for decades examined (and helped to improve) both formal and informal administrative trials of many kinds. Excerpts from documents prepared in Geneva three decades ago, for a conference sponsored by the International Commission of Jurists, could be made available and, we believe, would be useful and instructive.